

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 50256	DATE	12/7/2001
CASE TITLE	CHASE MORTGAGE vs. WENZEL		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m)   ☐ General Rule 21   ☐ FRCP41(a)(1)   ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, plaintiff's motion for summary judgment of foreclosure is granted. The parties are to appear on December 26, 2001 at 9:00 a.m. as to the relief to be granted.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials  /SEC6	U.S. DISTRICT COURT CLERK 01 DEC -7 PM 2:35 FILED-WD	number of notices	Document Number  23
			DEC - 7 2001	
			date docketed	
			docketing deputy initials	
			DEC - 7 2001	
		date mailed		
		mailing deputy initials		
		Date/time received in central Clerk's Office		

## MEMORANDUM OPINION AND ORDER

Plaintiff Chase Mortgage Company-West, f/k/a Mellon Mortgage Company ("Chase"), filed a complaint for foreclosure against defendants Catherine M. and Mary Ann Wenzel ("the Wenzels") pursuant to the Illinois Mortgage Foreclosure Law, 735 ILL. COMP. STAT. 5/15-1101 et seq. The court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as Chase is a New Jersey corporation with its principal place of business in Ohio, the Wenzels are citizens of Illinois, and the amount in controversy exceeds \$75,000. (Compl. ¶ 1) Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(a). Chase has filed a motion under Fed. R. Civ. P. 56 for summary judgment, alleging there are no genuine issues of material fact and Chase is entitled to a judgment of foreclosure as a matter of law.

On July 3, 1995, the parties executed a note and mortgage in the amount of \$108,000. (Compl. ¶ 4; LR 56.1(b) ¶ 1) The parties agree the Wenzels have defaulted on the mortgage, but disagree as to the amount due. The dispute centers on the Wenzels' ability to discontinue private mortgage insurance ("PMI"). The Wenzels argue PMI payments were to discontinue when certain conditions were met, based on oral statements made by a Chase agent at the closing. (C. Wenzel Aff., ¶ 3; LR 56.1 (b) ¶¶ 7-10) Chase argues paragraph 8 of the mortgage requires any agreement about the discontinuance of PMI payments to be in writing. Paragraph 8 of the mortgage states in part: "Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law." (Compl. Exh. B) No written agreement between the Wenzels and Chase concerning termination of PMI exists in this matter, and applicable law does not apply to the mortgage loan in this case so as to determine an ending time for private mortgage insurance. (LR 56.1(b) ¶¶ 4-5) Paragraph 2 also states that, "subject to applicable law or to a written waiver by Lender, Borrower shall pay" a sum, which includes yearly mortgage insurance premiums, if any, "until the Note is paid in full." (*Id.*)<sup>1</sup>

The court finds paragraph 8 unambiguously states the Wenzels must pay mortgage insurance premiums until the requirement for mortgage insurance ends in accordance with any written agreement between Chase and the Wenzels. Cf. Perez v. Citicorp Mortgage, Inc., 703 N.E.2d 518, 525-26 (Ill. App. Ct. 1998). The Wenzels seek to introduce oral evidence, but under Illinois law, if a contract is clear and unambiguous, the contract is interpreted as a matter of law within the four corners of the contract, without the use of parol evidence. Air Safety, Inc. v. Teachers Realty Corp., 706 N.E.2d 882, 884 (Ill. 1999); see also Kaplan v. Shure Bros., Inc., 266 F.3d 598, 604 (7<sup>th</sup> Cir. 2001). Even if a contract is facially unambiguous, objective extrinsic evidence may be considered to show a latent ambiguity in the contract language. See AM Int'l, Inc. v. Graphic Mgmt. Assoc., Inc., 44 F.3d 572, 575 (7<sup>th</sup> Cir. 1995). Catherine Wenzel's affidavit regarding statements made during the closing does not fall within this exception and is inadmissible. See id. Plaintiff's motion for summary judgment of foreclosure is granted.

---

<sup>1</sup> The court will apply Illinois law pursuant to the mortgage's choice-of-law provision. Compl. Exh. B, ¶ 15; see Turner/Ozanne v. Hyman/Power, 111 F.3d 1312, 1320 (7<sup>th</sup> Cir. 1997) (no general federal common law except in a few, unique areas); DeValk Lincoln Mercury, Inc. v. Ford Motor Co., 811 F.2d 326, 330 (7<sup>th</sup> Cir. 1987) (Illinois courts generally honor a contractual choice of law clause). The court notes Illinois' Mortgage Insurance Limitation and Notification Act, 765 ILL. COMP. STAT. 930/1 et seq., is inapplicable to the 1995 mortgage at issue here. See Perez v. Citicorp Mortgage, Inc., 703 N.E.2d 518, 520 (Ill. App. Ct. 1998).